Supreme Court, U. S.
FILED
SEP 16 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1471

UNITED STATES OF AMERICA
AND FEDERAL COMMUNICATIONS
COMMISSION

v.

NEW JERSEY STATE LOTTERY COMMISSION

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

AMICUS CURIAE BRIEF OF THE STATE OF CONNECTICUT IN SUPPORT OF THE NEW JERSEY STATE LOTTERY COMMISSION

ATTORNEY GENERAL
ROBERT K. KILLIAN

By: BARNEY LAPP
Assistant Attorney General

DANIEL R. SCHAEFER
Assistant Attorney General
30 Trinity Street
Hartford, Connecticut 06115

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1471

UNITED STATES OF AMERICA
AND FEDERAL COMMUNICATIONS
COMMISSION

v.

NEW JERSEY STATE LOTTERY COMMISSION

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

AMICUS CURIAE BRIEF OF THE STATE OF CONNECTICUT IN SUPPORT OF THE NEW JERSEY STATE LOTTERY COMMISSION

Your amicus is a state that has a lottery, and is affected by *United States of America and Federal Communications Commission* v. *New Jersey State Lottery Commission*, No. 73-1471.

1. It is our position that the ruling of the Federal Communications Commission, prohibiting news broadcasts of a state lottery's winning number, is a prior restraint upon freedom of the press, which is prohibited by the First and Fourteenth Amendments. As stated in the decision below by Chief Judge Gibbons of the Third Circuit:

"Broadcast news media, because of the immediate and highly transitory nature of their news coverage, present particular problems in this regard. They, above all news media, serve the public need to be informed on what is of immediate though of passing interest. They at least as much as the other news media should be left free to make their own editorial decisions as to what news will best serve their public. The only restraints on information by which, in the news context, the broadcast media may constitutionally be bound are those imposed by what little is left of the law of libel since *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 686 (1964) and its progeny, and by the law of obscenity (citations omitted). Clearly the winning lottery number is, on Thursday afternoon, press information protected by the first amendment."

491 F.2d 219, 223.

2. It is further noted that the Federal Communications Commission is not exempt from the dictates of the First Amendment, and this was recognized by Congress in enacting 47 U.S.C. § 326, which states:

"Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

3. These considerations are also significant, because the revenue devices involved in these cases are instrumental components of the fiscal systems of many state governments.

For these reasons, your amicus respectfully submits that the judgment of the United States Court of Appeals for the Third Circuit be affirmed.

Dated this 9th day of September, A.D., 1974.

Respectfully submitted,

AMICUS CURIAE

STATE OF CONNECTICUT

ROBERT K. KILLIAN
Attorney General

By: BARNEY LAPP
Assistant Attorney General

By: DANIEL R. SCHAEFER
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Daniel R. Schaefer, Attorney for the State of Connecticut, Amicus Curiae, certify that a copy of the foregoing Amicus Curiae Brief, was mailed, via U.S. Mail, postage prepaid, to the following attorneys of record: Stephen Skillman, Assistant Attorney General, State of New Jersey, State House Annex, Trenton, New Jersey 08625; Robert H. Bork, Solicitor General, Department of Justice, Washington, D.C. 20530; Thomas B. Kauper, Assistant Attorney General, Department of Justice, Washington, D.C. 20530; Louis Claiborne, Assistant Solicitor General, Department of Justice, Washington, D.C. 20530; Danny J. Boggs, Assistant Solicitor General, Department of Justice, Washington, D.C. 20530; Ashton R. Hardy, General Counsel, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; Joseph A.

Marino, Associate General Counsel, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; R. Michael Senkowski, Counsel, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

DANIEL R. SCHAEFER
Assistant Attorney General